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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GEORGE A. SABA, Plaintiff and Appellant, v. STELLA PANOS et al., Defendants and Respondents.	E071166 (Super.Ct.No. CIVDS1811376) OPINION

APPEAL from the Superior Court of San Bernardino County. Gilbert G. Ochoa, Judge. Affirmed.

George A. Saba, in pro. per., and for Plaintiff and Appellant.

Callahan, Thompson, Sherman & Caudill and Christopher J. Zopatti, for Defendant and Respondent, Stella Panos.

Law Offices of James R. Rogers and Keith E. Zwillinger for Defendant and Respondent, Craig R. Lareau.

This is the second time these events come before us. After the State Bar of California enrolled appellant George Saba as an inactive member under Business and Professions Code section 6007, subd. (b)(3) (section 6007), he filed a complaint (*Saba I*) against the State Bar prosecutor who handled his case, the psychologist appointed as his medical examiner, and a neuropsychologist who provided consultation to the medical examiner. The complaint in *Saba I* alleged the defendants conspired to deprive Saba of his law license by improperly extending the duration of his medical examination, requesting irrelevant medical records, falsely diagnosing him, and not revealing before the hearing that the psychologist had consulted with the neuropsychologist.

After the trial court (Judge Donald Alvarez) sustained the prosecutor's demurrer to *Saba I* without leave to amend and granted the doctors' anti-SLAPP motions[1], Saba filed this complaint (*Saba II*). Although *Saba II* asserts some new causes of action, its allegations are essentially identical to those in *Saba I*. The doctors once again filed anti-SLAPP motions, seeking to strike *Saba II* in its entirety, and the trial court (Judge Gilbert Ochoa) granted the motions—on the same grounds as the trial court in *Saba I*. Both courts concluded Saba's claims against the doctors arose from constitutionally protected petitioning activity that is shielded by the litigation privilege in Civil Code section 47.

In a separate opinion (E070635), we affirmed the trial court's rulings on the demurrer and anti-SLAPP motions in *Saba I*. In this appeal, Saba challenges the trial

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[1] "SLAPP" is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.)

court's rulings on the doctors' anti-SLAPP motions only.[2] We will affirm for the same reasons we affirmed in *Saba I*.

I

FACTS

A. *The State Bar Competency Proceeding*

The State Bar is a public corporation that acts as the "administrative arm of [the California Supreme Court] . . . in matters of admission and discipline of attorneys." (*In re Rose* (2000) 22 Cal.4th 430, 438; Cal. Const., art. VI, § 9.) In that capacity, the State Bar established the State Bar Court to conduct regulatory and disciplinary proceedings and provide recommendations to the California Supreme Court, which holds the exclusive authority to disbar, suspend, or place attorneys on inactive status. (See Cal. Rules of Court, rule 9.12; *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 598.) The Hearing Department functions as the State Bar Court's trial division and the Office of Chief Trial Counsel ("OCTC") as the prosecutor. (See Bus. & Prof. Code, §§ 6079.1, 6079.5, 6086.5, 6086.65.)

Section 6007 provides in relevant part, "The State Bar Court shall . . . enroll a licensee of the State Bar as an inactive licensee in each of the following cases: [¶] . . . [¶] . . . After notice and opportunity to be heard before the State Bar Court, the State Bar Court finds that the licensee, because of *mental infirmity* or illness, or because of the

[2] In addition to the doctors and the prosecutor, *Saba II* (unlike *Saba I*) names as defendants the State Bar, Saba's attorney, and the prosecutor's supervisor. Of these defendants, only the doctors are involved in this appeal.

habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public." (§ 6007, subd. (b)(3), italics added.)

Saba was admitted to practice law in California in 1988. In January 2017, with other disciplinary actions against Saba pending, OCTC sought an order to show cause why he should not be placed on inactive enrollment under section 6007 based on its discovery that the Veterans Administration (VA) had diagnosed him with Alzheimer's type dementia in 2011 and he had been receiving treatment for his condition since late 2015.[3] The State Bar Court found probable cause to hear the issue and ordered Saba to submit to an independent medical examination to assess whether a mental infirmity precluded him from competently performing his duties as an attorney. The order appointed Dr. Craig Lareau to conduct the section 6007 examination and draft a report, at the State Bar's expense. The order prohibited the examination from lasting longer than four hours "without further authorization of the court."

Saba completed the medical examination and signed the authorization allowing disclosure of his medical records relating to his psychological and psychiatric history. Dr. Lareau filed a 16-page report in which he concluded Saba was "unable to practice law without substantial threat of harm to the interests of his clients or the public" due to

[3] As explained in our opinion in *Saba I*, the other pending actions involved allegations Saba had filed frivolous cases and failed to pay and report sanctions.

"substantial neurocognitive deficits," including poor memory function and difficulty learning and assimilating new information.

The hearing took place on December 1, 2017, and Dr. Lareau testified. The OCTC submitted Dr. Lareau's report and the results of the tests he administered on Saba, as well as portions of Saba's medical record. Saba submitted written comments objecting to Dr. Lareau's evaluation and conclusions. Although Saba was represented at the hearing, the State Bar Court allowed him to also act as counsel and cross-examine Dr. Lareau.

In a written statement of decision, the State Bar Court concurred with Dr. Lareau's opinion, which it found was supported by clear and convincing evidence. The court noted Dr. Lareau's opinion was based on a six and a half-hour interview with Saba, extensive functional testing, and review of Saba's medical records, which revealed he had been complaining to his medical providers of forgetfulness since 2011.

The court concluded: "From all indications, [Saba] is a very intelligent man and he has been a good and aggressive advocate for his clients for the bulk of his many years of practice. Sadly, because of mental infirmities and through no fault of his own, [Saba's] abilities and reliability as an attorney have gradually eroded to the point where he is no longer able to practice law without substantial threat of harm to the interests of his clients and the public. Accordingly and with considerable sadness, this court finds that an order pursuant to section 6007(b)(3) is both appropriate and necessary." The court placed him on inactive status on December 29, 2017.

B. *Saba I*

The following month, Saba, acting as his own attorney, filed *Saba I*, a verified complaint for damages against the State Bar attorney who prosecuted his case, Dr. Lareau, and the neuropsychologist (Dr. Stella Panos) he consulted with on the test battery he administered to Saba. Relevant here, the complaint purported to assert four causes of action against Dr. Panos and Dr. Lareau—psychologist ethics violations, intentional infliction of emotional distress, breach of the covenant of good faith and fair dealing, and conspiracy, plus seven causes of action against Dr. Lareau—breach of contract, negligence, attorney ethics violations, fraud, negligent misrepresentation, false imprisonment, and violation of the right to privacy.

Saba alleged Dr. Lareau (i) was biased in favor of the State Bar and always sided with them in competency proceedings; (ii) made misrepresentations about his expertise, as well as how he would conduct the examination and draft the report; (iii) improperly extended the examination from four to six and a half-hours, refused to let Saba bring his oxygen tank or take any breaks during the examination, and let the temperature in his office reach a stifling 100 degrees; (iv) solicited from the VA additional medical records that were irrelevant to Saba's Alzheimer's diagnosis; (v) recklessly misdiagnosed Saba and prepared a false report; (vi) concealed the fact he consulted with Dr. Panos on the test battery; and (vii) gave false testimony at the section 6007 hearing. Saba alleged Dr. Panos drafted "at least 25% of [his neuropsychological] test results" and did not testify at his hearing. He alleged the two doctors are close friends and conspired to conceal Dr.

Panos's involvement in his medical examination and shield her from testifying at his hearing.

Dr. Lareau and Dr. Panos each filed a motion to strike *Saba I* as a SLAPP. (Code Civ. Proc., § 425.16, unlabeled statutory citations refer to this code.) They argued the allegations against them arose out of their work on Saba's medical examination for the State Bar competency proceeding, which is "conduct in furtherance of the exercise of the constitutional right of petition," protected under section 425.16, subdivision (e)(4).

In his declaration, Dr. Lareau, a licensed psychologist and attorney, said he was appointed by the State Bar Court to conduct an independent medical examination of Saba for the section 6007 mental competency proceeding. He said both parties agreed before his appointment that he would be permitted to "consult a neuropsychologist with respect to testing aspects of the evaluation process." He attached a copy of Saba's medical records he had received from the VA and said, contrary to Saba's allegation, all of the records related to Saba's "Alzheimer's diagnosis and/or his cognitive functioning." He denied Saba's allegations about the examination conditions. He attached the order from the State Bar Court extending the examination time from four to six hours. He said at the conclusion of six hours, he told Saba he had the right to terminate the examination, but Saba elected to complete the examination, which took an additional 30 minutes. He also said Saba took three restroom breaks and did not elect to take the more extensive breaks or the lunch break he was offered. Dr. Lareau said the temperature in his office had remained at approximately 75 degrees throughout the examination. Dr. Lareau said he

consulted with Dr. Panos, a specialist in neuropsychology, regarding "scoring and interpretation" of the tests he had administered to Saba. He said he testified at the section 6007 hearing, where both Saba and Saba's attorney cross-examined him on his opinion that Saba's cognitive deficits rendered him mentally unfit to continue practicing law.

In her declaration, Dr. Panos, a licensed neuropsychologist, said she had agreed to assist Dr. Lareau in interpreting Saba's neuropsychological tests. She said she was familiar with Dr. Lareau's forensic psychological work and believed he was competent to administer the tests. She said she never met Saba nor had any agreement with him; she simply received his raw test data from Dr. Lareau and discussed scoring and interpreting the data with Dr. Lareau. Both doctors declared they bore no ill will toward Saba and evaluated him objectively.

The only evidence Saba submitted in opposition to the anti-SLAPP motions was a declaration in which he reiterated the substance of the allegations in his verified complaint.

The trial court granted the anti-SLAPP motions.

C. *Saba II*

About a month later, Saba filed another verified complaint for damages, asserting new claims based on the same allegations in *Saba I*. Saba reasserted his breach of contract, fraud, and intentional infliction of emotional distress claims against the doctors, and added two new federal claims—racial discrimination and violation of due process and equal protection, plus two new state claims—unfair business practices and breach of

fiduciary duty. The allegations against the doctors are the same as in *Saba I*, except that he added an allegation the doctors denied him due process and equal protection of the laws and discriminated against him "on the basis of race."

The doctors once again filed anti-SLAPP motions. The parties' submissions were virtually identical to those in *Saba I*, as was the trial court's ruling (in this case, the court issued a written ruling). Saba timely appealed.

II

ANALYSIS

A. *Statutory Framework and Standard of Review*

California's anti-SLAPP statute authorizes a court to strike a cause of action arising from a defendant's free speech or petitioning activities unless the plaintiff shows a probability of prevailing on the merits. (§ 425.16, subd. (b)(1).) To resolve the merits of a section 425.16 special motion to strike, the court undertakes "a two-part analysis, concentrating initially on whether the challenged cause of action arises from protected activity within the meaning of the statute and, if it does, proceeding secondly to whether the plaintiff can establish a probability of prevailing on the merits." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699.) The defendant has the burden on the first issue; the plaintiff on the second. (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1536 (*Kolar*).) The trial court "considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based,'" and we do the same in our independent review of the trial

court's ruling. (*Equilon*, *supra*, 29 Cal.4th at p. 67; *Freeman v. Schack* (2007) 154 Cal.App.4th 719, 727.)

B. *Arising From Protected Activity*

Section 425.16 protects any "statement or writing made before a . . . judicial proceeding," as well as "any other conduct in furtherance of the exercise of the constitutional right of petition." (§ 425.16, subd. (e)(1), (4).) "The anti-SLAPP protection for petitioning activities applies not only to the filing of lawsuits, but extends to conduct that relates to such litigation, including statements made in connection with *or in preparation of litigation*." (*Kolar*, *supra*, 145 Cal.App.4th at p. 1537, italics added.) "[A] party's litigation-related activities constitute 'act[s] in furtherance of a person's right of petition or free speech,'" and "courts have adopted 'a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16.'" (*Ibid*., quoting *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908.) A claim *arises from* litigation-related activities if those activities "'"form[] the basis for"'" the cause of action. (*Equilon, supra*, 29 Cal.4th at p. 66.) Section 425.16 is "construed broadly, to protect the right of litigants to '"the utmost freedom of access to the courts without [the] fear of being harassed subsequently by derivative tort actions."'" (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1194.)

As he did in his *Saba I* appeal, Saba argues his claims against the doctors do not arise from protected speech or conduct. Because the allegations in this case are the same as in *Saba I*, we reach the same conclusion we did in that case. As we explained in our

prior opinion, Saba's claims against the doctors arise from the very essence of litigation-related activities—their work in preparation for providing a competency opinion at the section 6007 hearing. The fact Saba has added to his complaint new claims, like racial discrimination, is irrelevant. The protected activity analysis focuses on the allegations underlying a cause of action, not on the cause of action's name.

Finally, we reject Saba's argument that the conspiracy he alleges between the doctors was not a statement in connection with a judicial proceeding under section 425.16, subdivision (e)(1) because it took place outside the courtroom. As Saba alleges it, the conspiracy was an agreement between the doctors to conceal the test battery consultation Dr. Panos provided in connection with Dr. Lareau's court-ordered medical report. In other words, as alleged, the conspiracy was an agreement about how the doctors would score the psychological tests for Saba's competency proceeding and convey those scores to the State Bar Court. Such conduct falls squarely under section 425.16, subdivision (e)(4) litigation-related activities, which includes statements or conduct that take place outside the courtroom but relate to judicial proceedings. (See *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1481 [defendant's alleged threats made outside the courtroom, "in connection with an ongoing dispute and *in anticipation of* litigation," and before the filing of the complaint were protected] italics added.)

C. *Probability of Prevailing on the Merits*

To survive anti-SLAPP scrutiny, a plaintiff must demonstrate their cause of action has "minimal merit." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) Applying a "summary-judgment-like" test (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714), we accept as true the admissible evidence favorable to the plaintiff, and evaluate the defendants' evidence only to determine whether it defeats the plaintiff's showing as a matter of law. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The plaintiff must produce admissible evidence to support the claims, they may not simply rely on the allegations in their complaint, even if verified. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 656 [to constitute admissible evidence, the allegations in a verified complaint must fall "within the personal knowledge of the verifier"].) "The motion to strike is properly granted if, as a matter of law, the properly pleaded facts do not support a claim for relief." (*Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 721.)

Here, the trial court issued a written ruling concluding the litigation privilege in Civil Code section 47 barred Saba's claims against the doctors as a matter of law. We agree with that conclusion.

The litigation privilege "applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege or, more

apt, immunity, applies to all communications with "some relation" to judicial or quasi-judicial proceedings, rendering the communications "'absolutely immune from tort liability.'" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1050.) The privilege "is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards." (*Id.* at p. 1057; see also *Spitler v. Children's Institute International* (1992) 11 Cal.App.4th 432, 438 [child care professional's alleged statements to journalist in preparation of her testimony at the preliminary hearing are shielded].) Immunity "is accorded . . . to witnesses, even where their testimony is allegedly perjured and malicious." (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 641.) "[T]he privilege is not restricted to the actual parties to the lawsuit but need merely be connected or related to the proceedings," in other words, there must be "some reasonable connection between the act claimed to be privileged and the legitimate objects of the lawsuit in which that act took place." (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.)

The litigation privilege is relevant to prong two of the anti-SLAPP analysis because it "present[s] a substantial defense a plaintiff must overcome to demonstrate a probability of prevailing." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323; see also *Kashian v. Harriman*, *supra*, 98 Cal.App.4th at pp. 926-927 [plaintiff failed to satisfy prong two because litigation privilege barred his defamation action]; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 783-785 [same].) There is significant overlap between conduct protected under section 425.16, subdivision (e) and

conduct to which the litigation privilege applies. (*Feldman v. 1100 Park Lane Associates, supra,* 160 Cal.App.4th at p. 1479 ["Both the Supreme Court and the Court of Appeal 'have looked to the litigation privilege as an aid in construing the scope of section 425.16, subdivision (e)(1) and (2)'"].) Both statutes "protect the right of litigants to 'the utmost freedom of access to the courts without the fear of being harassed subsequently by derivative tort actions.'" (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.) "Any doubt as to whether the privilege applies is resolved in favor of applying it." (*Adams v. Superior Court, supra,* 2 Cal.App.4th at p. 529.)

As we explained in our *Saba I* opinion, *Gootee v. Lightner* (1990) 224 Cal.App.3d 587 is instructive. There, the plaintiff sued the psychologist who had performed an independent evaluation in a custody dispute between the plaintiff and his ex-wife, alleging the psychologist had negligently administered and interpreted the tests and destroyed certain raw test data. (*Id.* at pp. 589-590.) The appellate court affirmed a summary judgment ruling in favor of the psychologist on the ground the litigation privilege barred plaintiff's claim. "It is undisputed [the psychologist's] role was a limited one: to evaluate the partisans in the custody matter for purposes of testifying concerning the custody dispute." (*Id.* at p. 591.) The court concluded the gravamen of the plaintiff's claim was allegedly tortious conduct "committed . . . in connection with the testimonial function," which fell squarely under the litigation privilege. (*Id.* at pp. 591-596.)

Similarly here, Saba seeks to impose liability on Dr. Lareau and Dr. Panos for their participation in his mental competency proceeding. He claims Dr. Lareau recklessly

evaluated him and provided false opinions and testimony at his competency hearing. He also claims the doctors improperly concealed Dr. Panos's limited role as a consultant. The litigation privilege shields the doctors from liability based on allegations related to the performance of their work on his case.

Although Saba did not address the applicability of the litigation privilege in his *Saba I* appeal, in this appeal he attempts to cast the gravamen of his claims against the doctors as a conspiracy occurring outside of and unrelated to his State Bar proceeding. As we explained above in response to this same argument in the protected activity analysis context, by Saba's own allegations, the object of the conspiracy was his test scores for the competency proceeding. And, just as with litigation-related activities under section 425.16, subdivision (e)(4), there is no requirement the statement or conduct must take place inside a courtroom for the litigation privilege to apply. (*Silberg v. Anderson*, *supra*, 50 Cal.3d. at p. 212 [privilege applies "even though the publication is made outside the courtroom and no function of the court or its officers is involved"].) We therefore conclude the trial court properly determined Saba's claims against the doctors fail as a matter of law by reason of the litigation privilege.

As a final point, the doctors did not argue res judicata or claim preclusion applied to bar *Saba II*, but we note those doctrines are alternate grounds for affirming the trial court's correct ruling on the doctors' anti-SLAPP motions. (*Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 610 [we review the trial court's ruling, not rationale, and will affirm on any correct basis].)

III

DISPOSITION

We affirm the judgment. The parties shall bear their own costs on appeal.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.